

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:12-cv-599-RJC**

<b>MICHAEL ANTHONY BULLABOUGH,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	
	)	<u><b>ORDER</b></u>
	)	
<b>AARON E. MICHEL,</b>	)	
	)	
<b>Defendant.</b>	)	
	)	

**THIS MATTER** is before the Court for initial review pursuant to 28 U.S.C. § 1915(e). Plaintiff, who is proceeding pro se, filed a Complaint, (Doc. No. 1), and a Motion to Proceed in Forma Pauperis (“IFP Motion”), (Doc. No. 1-1), on September 13, 2012. For the reasons explained below, the Court grants Plaintiff’s IFP Motion and dismisses Plaintiff’s Complaint sua sponte as barred by res judicata.

First, as for Plaintiff’s motion to proceed in forma pauperis, the Court has examined Plaintiff’s financial statement and finds that Plaintiff qualifies for in forma pauperis status. Plaintiff’s IFP Motion, (Doc. No. 1-1), is GRANTED.

Plaintiff, an inmate in the Mecklenburg County Jail, filed his Complaint pursuant to 42 U.S.C. § 1983 against Defendant Aaron E. Michel. Defendant Michel represented Plaintiff in his criminal trial in state court. Plaintiff alleges in the Complaint that Defendant Michel rendered ineffective assistance of counsel.

Because Plaintiff is proceeding in forma pauperis, the Court must review the Complaint to determine whether it is subject to dismissal on the grounds that it is “frivolous or malicious

[or] fails to state a claim on which relief may be granted.” 28 U.S.C. § 1915(e)(2). In its frivolity review, this Court must determine whether the Complaint raises an indisputably meritless legal theory or is founded upon clearly baseless factual contentions, such as fantastic or delusional scenarios. Neitzke v. Williams, 490 U.S. 319, 327-28 (1989).

Plaintiff filed an identical lawsuit against Defendant Michel on May 17, 2012, and this Court dismissed that lawsuit on May 31, 2012 for failure to state a claim. See (Bullabough v. Michel, 3:12-cv-318, Doc. No. 4). This action is, therefore, barred by res judicata and will be DISMISSED. See Moody v. Able Outdoor, Inc., 609 S.E.2d 259, 261 (N.C. Ct. App. 2005) (Res judicata "precludes a second suit involving the same claim between the same parties or those in privity with them when there has been a final judgment on the merits in a prior action in a court of competent jurisdiction.").

**IT IS, THEREFORE, ORDERED that:**

1. Plaintiff's Motion to Proceed in District Court without Prepaying Fees or Costs, (Doc. No. 1-1), is **GRANTED**; and
2. Plaintiff's Complaint is **DISMISSED** in its entirety for the reasons stated herein.

The Clerk is directed to close the case.

Signed: September 19, 2012



Robert J. Conrad, Jr.  
Chief United States District Judge

